BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH

AT BILASPUR C.G.

In the Matter of W.P.No. 130 /2003

PETITIONER

Anjani Kumar Tripathi, son of about 32 years, resident of village orchha Shri Atmaram Tripathi, aged, Tah. Narayan pur, Distt. Bastar.

P. R. No. 1138/03
Presented by Shri A.K. Tripathi
dated 13.6.03

Versus

RESPONDENTS

1) State of Chhattisgarh, through : Secretary, Department of Panchayat Rural Avam Gramin Vikas Vibhag, D.K.S. Bhawan, Raipur (Chhattisgarh)

2) District Collector, Bastar, Jagdalpur (Chhattisgarh).

3) Sub Divisional Officer, Tah. Narayanpur Distt. Bastar.

4) Block Development Officer, Block-Orchha,Narayanpur, Distt. Bastar (CG).

5) Sarpanch, Gram Panchayat Padmkot, Orchha, Distt. Bastar

CERTIFIED COPY.
17/6/03
CLERK TO A.G. BILASPUR

उपायुक्त एस.डी. मुवक्किल बिलासपुर तहसील कोर्ट

(2)

(4)

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS, CERTIORARI QUO WARRANTO.

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(99)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1310 of 2003

Petitioner Anjani Kumar Tripathi

Versus

Respondents State of Chhattisgarh & others

SB: Hon'ble Mr. Justice **Satish K. Agnihotri, J**

Shri Bhaskar Pyasi , Advocate for the petitioner.

Smt. Anju Ahuja, Deputy Government Advocate for the respondents No.1 to 4.

Shri Arun Sao, Advocate for the respondent No.5.

ORDER

(Passed by this 8th day of February, 2007)

The following order of the Court is passed by **Satish K. Agnihotri, J.**

1. The present petition filed under Article 226/227 of the Constitution of India impugns the order dated 17.6.1999 (Annexure P/1) passed by the respondent No.5 as being unconstitutional on the ground that the petitioner was not afforded any opportunity of hearing and the order was passed in contravention of the provisions of Rule 7 of the Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 (for short 'the Rules, 1999'). It was further prayed that the respondents be directed to allow the petitioner to perform his duties as Panchayat Karmi-Secretary of the Gram Panchayat, Padmkot, Orcha, District- Baster.

2. The undisputed facts, in nutshell, are that the petitioner was appointed as Panchayat Karmi on temporary basis on fixed pay of Rs. 500/- p.m. by order dated 2.4.1996 (Annexure P/3). The petitioner was thereafter sent for training for Panchayat Karmi/ Panchayat Secretary and he was relieved from the training vide order dated 28.2.1997 (Annexure P/4).

3. It is mentioned in the impugned order Annexure P/1 that in the general body meting dated 17.6.1999 the Gram Sabha of the village Panchayat resolved to remove the petitioner from the post of Panchayat Karmi as he is an outsider i.e. not resident of the same village Panchayat and the petitioner was directed to hand over the complete charge of the post w.e.f. 21.6.1999.

4. Pursuant to the said Gram Sabha resolution the services of the petitioner as Panchayat Karmi was terminated w.e.f. 21.6.1999 (Annexure P/1).

5. Learned counsel appearing for the petitioner submits that Rule 7 of the Rules, 1999 provides for procedure before terminating service of a member of Panchayat. In the instant case, the said provisions were not followed, no definite charges were framed and the petitioner was not served with the articles of charges before holding an enquiry leading to termination of the petitioner from his services.

6. Learned counsel further submits that though it was an appointment on temporary basis but the termination order was passed on the basis of the allegation that the petitioner is an outsider i.e. not resident of the vicinity of the concerned village Panchayat. He further submits that the order is stigmatic and removal from service comes within the purview of major penalty, the same could not have been passed without following the provisions of law, prescribed in Rule 7 of the Rules 1999.

7. Admittedly, the Gram Panchayat, before passing the impugned termination order has not complied with the provisions of Rule 7 of the Rules, 1999. This Court in **Dhaluram Kosaria Vs. State of C.G. & others**[1], **Beegan Ram Vs. State of C.G. & others**[2] and **Prakash Chand Soni Vs. State of C.G. & othrs**[3] has held that the non compliance of the statutory provisions and denial of principles of

101

natural justice tantamounts to infraction of not only the provisions of Rule 7 of the Rules, 1999 but the provisions of Article 311 (2) of the Constitution of India also. The order of removal being penal in nature, visiting with civil consequences, cannot be passed without holding the enquiry in accordance with the elaborate provisions as prescribed in Rule 7 of the Rules, 1999.

8. It is thus clear that the respondents have not followed the statutory provisions of law before passing the impugned order.

9. In view of the foregoing, the petition deserves to be and is allowed. The impugned order Annexure P/1 is quashed. No costs.

10. On the question of back wages, no foundation has been laid to establish the fact that whether the petitioner was gainfully employed elsewhere or not during this period. Even otherwise keeping in view that the termination order has been vitiated not on merit but on account of non-compliance of the statutory provisions before terminating the services of the petitioner, 50% back wages would be sufficient in the interest of justice.

Sd/-
Satish K. Agnihotri
Judge

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1. 2006 (2) C.G.L.J. 186[1]
2. 2006 L.T. (C.G.). 41[2]
3. 2005 L.T. (C.G.) 151[3]

Thakur